

**BARCLAY DAMON LLP**

**Yvonne E. Hennessey**  
*Partner*

November 8, 2024

Honorable Miroslav Lovric  
 United States Magistrate Judge  
 United States District Court  
 Northern District of New York  
 United States Courthouse  
 15 Henry Street  
 Binghamton, New York, 13901

**Re:** *EPLET, et al v. National Grid USA et al,*  
**Case No. 5:18-cv-01267-DNH-ML**

Dear Magistrate Judge Lovric:

We represent Defendant Niagara Mohawk Power Corporation (“Niagara Mohawk”) in the above captioned action and submit this letter on behalf of the Settling Defendants.<sup>1</sup> The Settling Defendants request a status conference with the Court to discuss the settlement among the Settling Defendants and the United States Environmental Protection Agency (“U.S. EPA”), which also resolves, with prejudice, Plaintiffs’ claims against the Settling Defendants in this litigation. *See* U.S. EPA’s Letter, dated November 6, 2024 (attached). The cessation of the instant litigation against the Settling Defendants is a fundamental premise of the settlement and the extensive payments the Settling Defendants have agreed in principle to make to U.S. EPA and that U.S. EPA and the U.S. Department of Justice (“DOJ”) have agreed in principle to accept.

All that remains is for the Settling Defendants to formalize their settlement agreement through a Consent Decree with the U.S. EPA and ancillary settlement agreements with Plaintiffs and among themselves. The completion of these agreements will provide for the dismissal of the parties’ respective claims against one another in this action, with prejudice, following judicial entry of the Consent Decree(s).

The Settling Defendants intend to work expeditiously and cooperatively with the U.S. EPA, DOJ, and Plaintiffs to negotiate and finalize the necessary settlement documents. During this settlement process, the Settling Defendants respectfully submit that further sampling by Plaintiffs of the Settling Defendants’ properties and the Settling Defendants’ participation in mediation are unnecessary and would be unnecessarily burdensome given the settlement. Absent an amendment

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<sup>1</sup> The 16 Settling Defendants include: Carrier Corporation, Carlyle Air Conditioning Company, Inc., 6181 Thompson Road LLC, Bristol-Myers Squibb Company, C& S Engineers, Inc. (formerly Calocerinos & Spina Engineers), Gardner Denver, Inc., General Electric Company, Honeywell International Inc., Lockheed Martin Corporation, Magna Powertrain USA, Inc., National Grid USA, New Process Gear, Inc., Niagara Mohawk Power Corporation, Onondaga Pottery Company, Inc., ONX1 LLC and RTX Corporation.

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of the case management order as to the Settling Defendants, the Settling Defendants would be required to divert significant resources away from finalizing the settlement and instead towards litigating this case at great cost and expense. Furthermore, proceeding with Plaintiffs' proposed sampling in accordance with the current case management schedule at the Settling Defendants' properties creates the real risk that certain of the Settling Defendants will withdraw their respective financial contributions to the cash-out settlement with U.S. EPA, which in turn may undermine and jeopardize the proposed settlements in their entirety.

Given the foregoing and recognizing the long history of this case and the Court's desire to progress this case towards resolution, the Settling Defendants propose a conference as soon as possible with the Court to discuss the case management order as it relates to the Settling Defendants. The Settling Defendants circulated this letter to all parties in advance of filing it with the court and no parties objected.

Thank you for your attention to this matter. We appreciate the Court's time and consideration.

Respectfully submitted,



Yvonne E. Hennessey

cc: All counsel of record via ECF



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

November 6, 2024

Honorable Miroslav Lovric  
 United States Magistrate Judge  
 United States District Court  
 Northern District of New York  
 United States Courthouse  
 15 Henry Street  
 Binghamton, New York 13901

RE: *EPLET, et al. v. National Grid USA, et al., Case No. 5:18-cv-01267-DNH-ML*  
 Ley Creek Deferred Media Portion of the Onondaga Lake Superfund Site  
 Onondaga County, New York

Dear Magistrate Judge Lovric:

This letter is written to advise the Court that the U.S. Environmental Protection Agency (“EPA”) has reached an agreement in principle with the plaintiffs<sup>1</sup> in the above-captioned matter and with sixteen of the named defendants in that action (“Settling Defendants”).<sup>2</sup> The acknowledgement of an agreement in principle means that the settlement has been approved up to certain levels within EPA and at the Department of Justice, and it has been recommended, but it nevertheless remains conditioned upon final approval.

While EPA is not a party to this litigation, EPA is willing to pursue settlement with and resolve the alleged liability of the Settling Defendants to the United States. This would discharge the Settling Defendants’ alleged liability regarding any claims or counterclaims as filed in this matter, thereby ending any litigation as against them entirely. See Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9613(f)(2). EPA is working expeditiously with the Department of Justice to finalize

<sup>1</sup> The captioned plaintiffs in this matter are Revitalizing Auto Communities Environmental Response Trust, RACER Properties, LLC, EPLET, LLC, not Individually but Solely in its Representative Capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust.

<sup>2</sup> The proposed Settling Defendants are Carrier Corporation, Carlyle Air Conditioning Company, Inc., 6181 Thompson Road LLC, Bristol-Myers Squibb Company, C& S Engineers, Inc. (formerly Calocerinos & Spina Engineers), Gardner Denver, Inc., General Electric Company, Honeywell International Inc., Lockheed Martin Corporation, Magna Powertrain USA, Inc., National Grid USA, New Process Gear, Inc., Niagara Mohawk Power Corporation, Onondaga Pottery Company, Inc., ONX1 LLC and RTX Corporation.

settlement with plaintiffs and the Settling Defendants. This is consistent with the preference in CERCLA (a.k.a. the Superfund law) to encourage settlement, where possible, over litigation.

Likewise, EPA also remains willing to continue participating in a process for the potential resolution of the claims related to the remaining defendants. To achieve this would, if successful, end the litigation and result in the parties' resources being devoted toward addressing actual conditions at the Ley Creek Deferred Media portion of the Site over litigation.

Respectfully,



James Doyle  
Section Manager  
Office of Regional Counsel